

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1786 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

KOLI RAJUBHAI CHANNABHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

MR.HL JANI,AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 29-12-1997 passed by the District Magistrate, Bhavnagar, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on six criminal cases registered against the petitioner for offences punishable under sections 326, 323, 504, 324, 341, 114 etc of the Indian Penal Code which are pending trial in the competent Court. Over and above these criminal cases of theft, the detaining authority has also placed reliance on the statements of three witnesses of the alleged incidents of 17-10-97 , 15-10-97 and 24-10-97 whose names have not been disclosed by the detaining authority in exercise of the privilege conferred upon him under section 9(2) of the PASA Act.

With regard to the incident of 17-10-97 it is alleged that when the witness was going with his fruits-lorry, the petitioner and his two associates took fruits from the lorry and when the witness demanded money the petitioner took out his knife and gave knife blow to the witness and dragged him on the road and given fist blows. The witness, it is alleged, because of the threat given by the petitioner did not file any complaint.

With regard to the incident of 15-10-97, when the petitioner tried to take a soda-water bottle from the lorry of the witness and when the witness refused to do so, the petitioner threw the witness on the road and gave him fist blows. On this the people gathered and the shops and cabins in the locality were closed. Because of this an atmosphere of terror and fear was created . oo
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With respect to the incident of 24-10-97, it is alleged that the petitioner and his men tried to extort Rs.100 each from the hawkers and on being refused to part with the money, the witness was beaten; people gathered there started running helter-skelter and the petitioner gave threat to the witness in case any complaint is lodged against him and the even tempo of the life was disturbed.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that assuming for the sake of arguments that the

allegations made against the petitioner are true , the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type . Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also visited . The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 29-12-1997 is quashed and set aside. The detenu Koli Rajubhai Chhanabhai isis ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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